

**Letter of Findings Number: 04-20150581**  
**Gross Retail Tax**  
**For Tax Years 2012 & 2013**

**NOTICE:** IC § 6-8.1-3-3.5 and IC § 4-22-7-7 require the publication of this document in the Indiana Register. This document provides the general public with information about the Department's official position concerning a specific set of facts and issues. This document is effective on its date of publication and remains in effect until the date it is superseded or deleted by the publication of another document in the Indiana Register. The "Holding" section of this document is provided for the convenience of the reader and is not part of the analysis contained in this Letter of Findings.

### HOLDING

Subject to a supplemental audit review, Indiana Jewelry Retailer was not required to collect Indiana sales tax on certain transactions sourced outside of Indiana.

### ISSUE

#### **I. Gross Retail Tax - Out of State Jewelry Sales.**

**Authority:** IC § 6-2.5-1-2; IC § 6-2.5-2-1; IC § 6-2.5-4-1; IC § 6-2.5-9-3; IC § 6-8.1-5-1; IC § 6-8.1-5-4; IC § 6-2.5-13-1; Indiana Dept. of State Revenue v. Rent-A-Center East, Inc., 963 N.E.2d 463 (Ind. 2012); Lafayette Square Amoco, Inc. v. Indiana Dep't of State Revenue, 867 N.E.2d 289 (Ind. Tax Ct. 2007); Scopelite v. Indiana Dep't of Local Gov't Fin., 939 N.E.2d 1138 (Ind. Tax Ct. 2010); Wendt LLP v. Indiana Dep't of State Revenue, 977 N.E.2d 480 (Ind. Tax Ct. 2012); Indiana Dep't of State Rev. v. Caterpillar, Inc., 15 N.E.3d 579 (Ind. 2014); [45 IAC 2.2-2-1](#).

Taxpayer argues that it sold jewelry to customers, that the jewelry was delivered to the customers' out-of-state locations, and that it was not required to collect Indiana sales tax on those transactions.

### STATEMENT OF FACTS

Taxpayer is an Indiana jewelry retailer. In addition to selling jewelry, Taxpayer sells gift items, repairs and cleans jewelry, and offers appraisal services and custom engraving.

The Indiana Department of Revenue ("Department") conducted a sales and use tax audit of Taxpayer's business records for tax years 2012 and 2013. The audit concluded that Taxpayer failed to collect sales tax on certain transactions with its customers and assessed Taxpayer additional tax.

Taxpayer protested the Department's assessment as it applied to a specific selection of sales and provided additional evidence to support its protest. This Letter of Findings is based on the additional evidence provided by Taxpayer and the information contained within the protest file. Further facts will be supplied as required.

#### **I. Gross Retail Tax - Out of State Jewelry Sales.**

### DISCUSSION

The Department assessed additional sales tax on Taxpayer's sales records which indicated an out-of-state shipping address but neither out-of-state shipping or delivery could be confirmed. Taxpayer disagreed, providing additional documentation to prove the out of state sale.

All tax assessments are prima facie evidence that the Department's claim for the tax is valid; the taxpayer bears the burden of proving that any assessment is incorrect. IC § 6-8.1-5-1(c); Lafayette Square Amoco, Inc. v. Indiana Dep't of State Revenue, 867 N.E.2d 289, 292 (Ind. Tax Ct. 2007); Indiana Dept. of State Revenue v. Rent-A-Center East, Inc., 963 N.E.2d 463, 466 (Ind. 2012). Thus, the taxpayer is required to provide documentation explaining and supporting its challenge that the Department's assessment is wrong. Poorly developed and non-cogent arguments are subject to waiver. Scopelite v. Indiana Dep't of Local Gov't Fin., 939 N.E.2d 1138, 1145 (Ind. Tax Ct. 2010); see also Wendt LLP v. Indiana Dep't of State Revenue, 977 N.E.2d 480, 486 n.9 (Ind. Tax Ct. 2012). When an agency is charged with enforcing a statute, the jurisprudence defers to the

agency's reasonable interpretation of that statute "over an equally reasonable interpretation by another party." Indiana Dep't of State Rev. v. Caterpillar, Inc., 15 N.E.3d 579, 583 (Ind. 2014).

Indiana imposes a sales tax on retail transactions made in Indiana. IC § 6-2.5-2-1(a); [45 IAC 2.2-2-1](#). A retail transaction is a transaction made by a retail merchant that constitutes "selling at retail." IC § 6-2.5-1-2(a). Selling at retail occurs when a person "(1) acquires tangible personal property for the purpose of resale; and (2) transfers that property to another person for consideration." IC § 6-2.5-4-1(b). A person who acquires tangible personal property in a retail transaction (a "retail purchaser") is liable for the sales tax on the transaction. IC § 6-2.5-2-1(b). A retail merchant, such as Taxpayer, is required to "collect the tax as agent for the state." IC § 6-2.5-2-1(a). The retail merchant "must keep books and records so that the department can determine the amount, if any, of the [retail merchant's] liability for tax by reviewing those books and records." IC § 6-8.1-5-4(a). Additionally, the retail merchant "holds those taxes in trust for the state and is personally liable for the payment of those taxes . . . ." IC § 6-2.5-9-3.

The Indiana retail merchant is not responsible for collecting the Indiana sales tax if the retail transactions, i.e., sales, are considered non-Indiana sales. That is, sales are not subject to the Indiana sales tax when the tangible personal property sold are delivered, and therefore sourced, to a place outside of Indiana. The Indiana Code dictates how a retail sale should be sourced.

IC § 6-2.5-13-1(d) states:

- (1) When the product is received by the purchaser at a business location of the seller, the sale is sourced to that business location.
- (2) When the product is not received by the purchaser at a business location of the seller, the sale is sourced to the location where receipt by the purchaser (or the purchaser's donee, designated as such by the purchaser) occurs, including the location indicated by instructions for delivery to purchaser (or donee), known to the seller.
- (3) When subdivisions (1) and (2) do not apply, the sale is sourced to the location indicated by an address for the purchaser that is available from the business records of the seller that are maintained in the ordinary course of the seller's business when use of this address does not constitute bad faith.
- (4) When subdivisions (1), (2), and (3) do not apply, the sale is sourced to the location indicated by an address for the purchaser obtained during the consummation of the sale, including the address of a purchaser's payment instrument, if no other address is available, when use of this address does not constitute bad faith.
- (5) When none of the previous rules of subdivision (1), (2), (3), or (4) apply, including the circumstance in which the seller is without sufficient information to apply the previous rules, then the location will be determined by the address from which tangible personal property was shipped, from which the digital good or the computer software delivered electronically was first available for transmission by the seller, or from which the service was provided (disregarding for these purposes any location that merely provided the digital transfer of the product sold).

As mentioned earlier, Taxpayer is required to maintain and preserve documentation on its sales so the Department can correctly determine Taxpayer's tax liability. Taxpayer failed to do so during the audit. As a result, the Department properly assessed additional sales tax pursuant to the audit.

Thus, in order to support its protest, Taxpayer must provide documentation to show that it sold jewelry to out-of-state customers and delivered that jewelry to the customers' out-of-state locations. Taxpayer did so during the protest process. Taxpayer provided two categories of documentation. The first of which were multiple copies of sales invoices which proved that certain sales included in the additional assessment were actually duplicates of one another. Taxpayer issues different versions of the same invoice depending on the stage of the sale. Special orders, layaway items and final orders are all tracked on separate invoices with the same invoice number. The Department reviewed these and agrees that the duplicates should be removed from the assessment. The Department's Enforcement Division is asked to remove these in a supplemental audit.

Taxpayer also provided invoices and shipping documents for certain sales which taxpayer claims were shipped and delivered outside of the state. While the invoices show customers with an Indiana address, the shipping records show out-of-state delivery. The Department's Enforcement Division is requested to conduct a supplemental audit of this evidence in order to determine whether or not Taxpayer's documentation proves that the sales in question should be sourced outside of Indiana and should therefore be exempt from Indiana sales tax.

On the issue of the duplicate sales, Taxpayer's protest is sustained. To the extent that the supplemental audit review determines Taxpayer's supporting documentation substantiates that the sales at issue were not subject to Indiana sales tax, Taxpayer's protest is sustained. Otherwise, Taxpayer's protest is respectfully denied.

**FINDING**

Taxpayer's protest is sustained, subject to results of the Department's supplemental audit review.

*Posted: 05/25/2016 by Legislative Services Agency*

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